

BOARD OF ZONING APPEALS

Minutes

December 18, 2001

The regular meeting of the Board of Zoning Appeals of the City of Wichita, Kansas, was held at 3:00 p.m., on December 18, 2001, in the Planning Department Conference Room, Tenth Floor of City Hall, 455 N. Main, Wichita, Kansas.

The following Board members were in attendance: JOHN ROGERS, BICKLEY FOSTER, JAMES RUANE, FLOYD PITTS, JAMES SKELTON, and RANDY PHILLIPS, BRADLEY TIDEMANN, present.

The following Planning Department staff members were present: DALE MILLER, Secretary, SCOTT KNEBEL Assistant Secretary, LISA ESTRADA, Recording Secretary.

Also present: Sharon Dickgrafe – Assistant City Attorney.

Also present: J. R. COX – Commercial Plan Review/Commercial Zoning -- Office of Central Inspection.

RUANE: Calls BZA meeting to order. I am going to ask the Secretary to call the role, please.

ESTRADA: Completes role call.

RUANE: The first Item on the Agenda is approval of the minutes for our meeting of the month of November. Does anyone note any corrections, modifications, or other adjustments to those minutes? I would ask that on Page 2, in the paragraph that indicates the opposing votes on reopening BZA2001-00050, that it reflect that I was one of the two no votes in reopening that matter. John, can you recall voting in favor of reopening the Dick's Sporting Goods matter?

ROGERS: I don't recall. I don't believe I was.

SKELTON: I think it was us four who voted in favor, because I do remember that you voted to reopen the case.

RUANE: Okay, never mind then. Let's let the minutes stand as submitted unless there is some other suggestion.

SKELTON moves ROGERS seconds to approve the minutes of November 27, 2001.

MOTION carries 7-0.

RUANE: We will move on to Item No. 2, Case No. BZA 2001-00050, variance to increase maximum height of a building sign for Dick's Sporting Goods from 30 feet to 38 feet 6 inches on property zoned "LC" Limited Commercial. I believe the applicant is here.

PHILLIPS: Mr. Ruane, as in the previous hearings of the case, I need to declare a conflict of interest as we have been involved in the architectural standpoint of the project, and I will remove myself from the bench here.

RUANE: Thank you, Randy. We are on Item 2, regarding Dick's Sporting Goods, and I am eager to hear the applicant's presentation. You have a full house today Christian, or at least a full panel at least, so we are that much closer to making a final decision on this matter.

CHRISTIAN ABLAH with CLASSIC REAL ESTATE: There are a lot of people here with a lot of other things to talk about, and I would be happy to discuss and answer any questions. The client would still like to be there and would like to have the variance granted. But I think I have said quite a bit the last few times, and you know we would be happy to listen to perhaps a suggestion, if that is reasonable, maybe a little bit less than 38 feet 6 inches, perhaps a 36 or 35 feet, if that is something could help to get the BZA Board off of a dead center and where we were the last time. I know it takes four votes, and quite honestly I have tried and attempted to talk to Marvin and try and negotiate a deal with staff and have not been able to do that. I would love to get the variance granted. I would be available for any question. I just don't want to re-iterate and waste everyone's time.

RUANE: This matter has been on our Agenda several times before. Is there anybody that needs Christian to fill in any details for you or provide any additional detail with regard to the applicant's request? Or do you have any other questions for the applicant?

PITTS: I would like to ask Christian, I don't have a photo here of the pictures that you passed out at the last meeting; but when I reflected on it, I thought that I saw that the bottom of the sign that you had shown us the last meeting. The bottom of the sign was actually taller than the height of the building. Do you have any recollection of that, or do you have those pictures with you?

ABLAH: I do not have those pictures with me that I provided that last meeting to each of you, but your questions is, I am not quite sure I understood.

PITTS: I thought that I reflected upon the bottom of the sign exceeding the height of the existing structure, the roofline. I don't know if I was correct in that or not, but that is what I thought I saw.

ABLAH: Does that do it for you? I am not quite sure.

PITTS: I think that is what I am seeing.

ABALH: That was at 38 feet from the last time.

RUANE: Christian, will you come and look at something for me away from the podium. This is the west elevation as it has been presented to us. Is that a correct depiction of the 38 ½ foot sign, the total sign height relationship to the building?

ABALH: Yes.

PITTS: That is not the same spec that I just looked at. The bottom of the sign actually is on the roofline or equal to, and that is not what that is showing.

RUANE: I am just trying to figure out what you are saying.

PITTS: I don't know which picture is correct.

ABALH: That is correct Mr. Pitts. That is in relationship as to where the new sign would be as it relates to the existing structure.

PITTS: So one of them is wrong, either that one or the one you just showed us.

ABALH: Well that was just showing on what the existing building with the sign company had done showing it where it would be once the new building is there. That building would come down and there would be a new building as it is reflected in that new picture.

KNEBEL: If I might interject, I suspect that the difference is the height of the new building is probably a little lower than the existing building.

PITTS: The height of the new one is a little bit

ABALH: That is exactly right. I am happy to go through the whole thing, but just in respect that this is the fourth time that we have talked about this, don't let it take away from the importance of what the client would like to have, and the client would like to be here, but I would just like to be courteous of everyone's time.

RUANE: Sure, I appreciate that, and that is part of the reason why I wanted you to present first, was in the interest of efficiency. Are there any other questions for the applicant? Would staff have any comments or commentary with this item?

KNEBEL: We don't have any other additional information other than what is in the staff recommendation.

RUANE: Anyone in the audience that would like to be heard on this item?

DAVID BABICH, 4431 Ironwood: I spoke on this issue last time with more of my personal observations, and I also didn't want to take up any additional time and made reference to the staff recommendation that you probably ought to be aware of those. Having made those personal observations, I am not going to repeat them, but having gone through the proceedings, it came to my mind that those points made by the staff that you are required to make your judgments upon; maybe weren't as explored as I thought they might be. So the purpose of my presentation here today is to address what the good work I think the staff has done in denying this.

Those are as far as the hardship goes that the staff recommendation is that it is not a hardship that wouldn't be self imposed. The applicant indicates that the strict application of the Sign Code constitutes an unnecessary hardship because the sporting goods store desires their proto-typical package, which includes a building sign, which is higher than permitted by the Sign Code of the underlying district. Planning staff is aware of an instance, and I am personally aware of instances in the Kansas City area, where the applicant has deviated from their "proto-typical sign", so there is no evidence of any hardship there.

As far as how it affects adjacent properties, it would be out of character with the area, which contains planned commercial developments consisting of similar intensity commercial uses developed under signage and architectural controls intended to create attractive and cohesive commercial development. Granting the requested variance would establish a precedence that conflicts with that planned development and would lead to other businesses requesting more and larger signs. I certainly agree with that.

In the public interest, there is no evidence that development of the property in a manner that does not conform to the sign regulations is the only manner by which the property can continue its productive use. The properties along Rock Road are fully developed. When somebody leaves, somebody comes right back in. There will be the same tax base or better, so that item doesn't hold any water.

The spirit and intent is the opinion of staff that granting of the variance requested would oppose the spirit and intent of the Sign Code in as much as the sign

regulations are designed for application in instances where “big box” retailers are located in the “LC” district. The intent of these regulations is to limit building signs to 30 feet and provide ground-mounted signs along the road. That was even brought into contention. This is definitely a “big box”. It is a destination, and the applicant has said that, “no this is not a destination item.” My contention is that you are not going to go along Rock Road and look at a sign and say, “I think I will go in and by a bowling ball.” A sporting goods store is, by definition, a destination.

So what I am asking you to do is to take another look at these five items, because that is our judgment, and on this Board, you are not an Economical Development Board, you are a Judicial Board, and it is those five points that we are suppose to make the judgments on, so I guess I would ask you to reflect on those seriously.

RUANE: Anyone else in the audience to appear on this Item? We will bring our discussions up to the bench. Both the applicant, staff, and concerned citizens have been brief and right to the point and have picked right up where they have left off in the previous four times that we have discussed this item, and I ask that we do this as well. The history is that we have consistently voted 3-3 in a manner which has caused this item to be moved month to month on the Agenda. So I would like to hear us have some discussion as to how we might come up with a final decision on this matter today.

ROGERS: I would like the minutes to reflect that we were also given a handout that it appears that Mr. Tim Grube another neighboring business could not attend today’s meeting. Did everyone else get a copy of that letter?

RUANE: It was in the packet. It was new last month I believe. I guess I will throw something out for discussion. The past three times this has come up for vote I have voted in favor of staff’s recommendation and against the applicant’s request. But I feel that, as Chair, I have an obligation to keep the business of this body moving forward, and that if somebody has to budge in the interest of simply keeping the Agenda moving and keeping business flowing through this Board and it is incumbent upon me, then I will do that. So I will just throw that out for further discussion, just to let you know what I am thinking.

FOSTER: I think that we are here to make a decision on the standards that are set before us. I believe that the staff has written one of their best reports that we have had, and it is very detailed. I believe the last speaker mentioned many of the things that I am concerned about, the self-created hardship. I would add that it is not a unique situation. There are other stores that are in back there, including the largest retail business in the world. I very carefully the last time looked over the eight views that the applicant furnished us from Rock Road, and in every one of them you could see a sign at 30 feet except the last one. It would be a partial one,

for perhaps less than a second if you were driving by. I would also point out that, even at 38 feet, it has lowered the issue about K-96. It could no longer be an issue. They don't bring that up anymore. I see no advantage. I think it sets a very poor policy for the City to allow people to buy structures in back of others and then want signs up above them. So I continue to feel that this is, and that the staff report is a very appropriate one.

PITTS: I think that I feel just as strongly towards the motion that we made on justifying the case for doing it, or the motion that the person's that made that was in favor of granting the variance. I think that it is commendable that the Chair has mentioned that he is willing to, perhaps, maybe to compromise. I don't think that it is a violation of the integrity of his oath, or anyone's oath, to compromise a little bit for the sake of expediency. So if we do need to do something with this I think that I am willing to stay with my previous intent to approve the variance and recommendation, and we need one other that was willing to do that, we could move forward.

SKELTON: I know that there is a lot of concern on precedence on this variance, and I think that anytime that we grant a variance it can be argued that we are setting a precedent. My opinion is that you know like the golf shop up against Rock Road. It is adjacent to the street, and so I feel that part of the justification for granting this variance would be the distance that it is from Rock Road. So that is part of how I feel, and I am still in favor. After considering all this information four times, I am still finding myself in favor of this variance.

FOSTER: I ask Mr. Skelton, "Is it any different than any other business lined up along there in distance?"

SKELTON: I think that it sure could be argued that it can because there is no other business that is located in this specific site. There are businesses to the left. There are businesses to the right, but not on this specific site, so yes.

FOSTER: There never could be any on the same site.

SKELTON: That makes it unique.

FOSTER: It is lined up with the other businesses on the same area there. But I won't pursue this. You have obviously measured it.

RUANE: In the interest of getting good minutes, we have to make sure that neither of us speaks over one another. On that particular point, Bickley, I believe that you are exactly right that there are a number of other businesses that share that setback from Rock Road. But part of what is causing me to change my mind is in driving through there they are more the type of business that one would go to

more deliberately say bowling, or a movie, or something like that. You have specific plans, and that is what your activity is going to be, and you have a particular destination picked out, movie picked out, the time you are going to go, etc. It is not the kind of impulse that one might exercise when you saw the sign for a store and pulled in and walked out with a bowling ball or something. But, your point is well taken with regard to Wal-mart, but their corner location gives them far greater visibility just by that factor alone. We do need to make a decision as is correctly pointed out based upon the Statue and the grounds set before us for any motion to be made or any action to be taken. We need to fit it within that criteria.

ROGERS: My opinion on this case has not changed. I feel like our rules regarding signage are in place for a reason. The applicant mentioned when he was addressing us that they might be open to some type of, and I forget his exact wordage, and it wasn't negotiation, in essence to maybe lower the height of the sign. I would like to see Dick's Sporting Goods come to Wichita, and I might feel differently, and I do support staff like I did in the past, if they had come to the Board and said, "Let's try to work out something out to where it is a win-win situation." But since they haven't presented that to us, my vote would remain to support the staff. I don't want to open up a can of worms, and I agree with Mr. Foster.

RUANE: Is it within our purview to consider an application not before us, say could we make a motion to approve something different than application before us?

DICKGRAFE: We have in the past. I think that in the past that was done primarily at some kind of representation from the applicant that 34 feet would be sufficient, 36 feet would be sufficient, whatever it was that they could live with. I know in the past that the Board has approved on their on motion height variances that were different, perhaps, other than the application, and then that left the applicant with either accepting that or appealing it, which at least in this scenario would get this case moving.

RUANE: What do you say? I think we have an obligation in fairness to the applicant, in fairness to the other people that have items on our agenda, that we need to make some binding decision which either concludes this matter once and for all or gives the applicant something they can take across the street and appeal from. Other than what I have already said, given the way the votes have lined up in the past and how it would appear that we are destined to go down that same road for another month, the only way that I can figure to see this go forward is to change my vote and go on down the road in hopes that we have not created a dangerous precedent and opened up Pandora's box as some of you have suggested. If this property isn't truly unique, which is one of the findings that we

would be making, then we would in fact have established some precedent which we may find regrettable. Does anybody have a motion?

FOSTER: Does that mean that we now have, in addition to five items, we now have six items to make a decision on and that is the people that are waiting in the audience? Is that criteria now?

RUANE: I am not quite sure how to respond to that.

FOSTER: You don't have to, but I am just wondering if we had a sixth item to consider here.

PITTS: I don't see the motion that was made before to approve the variance, but I believe Mr. Skelton made it.

SKELTON: That is what I am looking for.

RUANE: Let me try to respond to your concerns Bickley. You are certainly entitled to your opinion and your comments, but I am trying to be pragmatic here and determine that for an applicant to be waiting five months for us to make a decision, for them to have a real estate transactions to wait that long is not doing anybody any good.

FOSTER: May I remind you that we have made a decision. The applicant re-applied. If you will recall that the decision was made. The applicant re-applied. We did not delay that.

SKELTON: I have heard him say this at the last meeting, and I am confused by this, but I thought he re-applied with a different variance. Am I correct in my understanding that this is a different variance? He did not reapply with the same variance he applied with a different variance?

RUANE: He reapplied with a different variance, and the vote that we were talking about at the outset was the first decision that we had to make was whether or not in our opinion the second variance was different enough to merit our reconsideration of the entire matter. Once we reached the conclusion that it was different enough, that was when we set ourselves down this path that we have been on. You are correct. Any further discussion? Shall we call the question?

FOSTER: We need a motion Mr. Chairman. Somebody is going to have to come up with the five factors.

DICKGRAFE: I am not sure that the last motion to affirm had the findings of fact included in there, and I think that it is important for the Board, that if this

variance is going to be approved, to make those findings, because not only can the applicant appeal but the City or staff could appeal the Board's decision also. So from an appellant's standpoint, whoever makes the motion needs to make sure that they come up with facts or statements or references to the testimony presented to affirm the motion or to support the five factors.

RUANE: Let's take a moment then and come up with that.

PITTS: Where are the ones that Mr. Skelton made? It wasn't in the last meeting, but it was in the first meeting.

DICKGRAFE: I may not have been here for that meeting.

TIDEMANN: They were made at one time.

DICKGRAFE: We could reference those minutes. Then I think that would be sufficient, if we are sure that they are in there, and staff could determine what they are.

RUANE: Do we have access to the minutes from two meetings ago?

SKELTON moves, TIDEMANN seconds, that the Board accept the findings of fact as follows; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and that the variance be granted.

1.) The property is unique because it is a single-use multi-purpose building and it will have a total change in use.

2.) The adjacent property will not be affected because other properties that are adjacent to Rock Road do not suffer the same setback off of the main right-of-way as this business does.

3.) Strict application of the provision of the zoning regulations may constitute unnecessary hardship because of the location and setback from Rock Road and other nearby streets.

4.) Granting of the variance will not adversely effect the public interest because there are no negative impacts on property owners closer to Rock Road.

5.) Granting of the variance would not be opposed to the spirit and intent of the ordinance because it does not detract from the character of this retailer area whatsoever.

RUANE: So we have before us a motion to approve a variance with findings other than those stated in the Secretary's Report. The motion has been seconded is there further discussion?

FOSTER: I would point out in my opinion all five of them do not meet the facts, and that is my opinion, that none of them would met facts. None of the five meet the criteria for a BZA case.

RUANE: Any other comments on this matter? Is the Board ready to vote on this Item? The motion is to approve the variance with findings other than those stated in the Secretary's Report. That stated, a vote in the affirmative would mean that this Board's decision is that the applicant be given the variance they seek.

MOTION to approve variance: TIDEMAN, RUANE, SKELTON, PITTS.

MOTION to approve opposed by: FOSTER, ROGERS.

MOTION CARRIES 4-2-1 PHILLIPS abstains from vote due to conflict of interest.

RUANE: Is there any further discussion on this Item? We now have a final decision. Either parties on either side of this issue can start from this point if they must, but at least it has moved through this stage of the proceedings. Thank you for your patience. We will move on to our next item. Item #3, Case number BZA2001-00063 which is an appeal of an Administrative Interpretation of the Zoning Administrator for a Sign Code Interpretation dated November 13, 2001, concerning determination of gross surface area of proposed sign on property zoned "GC" General Commercial. The general location of this property is on 13th Street North and west of Rock Road (1633 N. Rock Road).

What is the typical protocol for this? Is there a staff presentation?

DICKGRAFE: I think in the past we have let Kurt go first and explain his opinion and then let the applicant essentially rebut that.

KURT SCHROEDER, SUPERINTENDENT OF CENTRAL INSPECTION AND THE ZONING ADMINISTRATOR FOR THE CITY OF WICHITA: The Zoning Administrator is the person designated to make interpretations of the Sign Code by Section 24.04.135 of the Sign Code. Before you today, I don't think that anybody in disagreement that this particular sign design qualifies as a ground sign under the Sign Code or a pole sign, is a ground sign. It fits that definition. I don't think anybody is contesting that point.

What is at issue here is how to calculate the actual square footage of this particular sign. I will tell you that it is extremely unique. I don't know that, at least in my 10 years here in the City of Wichita, that we have ever seen an application for one just like this. I think this is the first time that we have ever seen an application for such a circular suspended sign structure. Basically if you will look, probably in your packet, I think the second from the last page has a picture that was taken, I believe, in Houston by Mr. Brandon Steven when he was down there. That kind of gives you a good indication of what this sign would look like. It says Sage Road on the sign. These are signs that are hung over intersections down in the Houston downtown area.

I am not sure how well you can see that, but you do have a picture in your packet of what this would look like. You can see it here that it is kind of suspended over the intersection. A big chrome ring and on that ring is etched or in lights and is internally lit are the names of the streets at that intersection. This is the kind of sign that is being proposed here for Brandon Steven Motors here at 1633 N. Rock Road.

What it boiled down to in looking at this sign, I think that the applicant felt that the only part of this sign that should count toward the allowable square footage for this lot is what actually says "Brandon Steven Motors". I think in their Appeal they said what you could see directly if you were standing right on Rock Road or across street from this sign looking directly at that face of the sign, they had indicated that you would see about 90 square foot of this ring.

Basically what I am saying by the Sign Code is that there is a section in the Sign Code 24.04.220(m) that says basically that a sign can be more than just the words that are on that sign. It can include the architectural embellishments that are part of that sign. If it is over 10 percent of the signage or the lettering or whatever it is included in that sign, basically that would have to be counted as square footage toward what is allowed in square footage for that lot.

I am basically saying that this whole chrome ring is part of this display, or this sign display, and that everything that you see here is kind of an architectural embellishment that is part of this sign display.

So how do you calculate that area? I think the applicant has indicated, as I have said, that you just see one side of that ring, if you are right out on Rock Road looking directly across. However, if you look at these pictures, I suggest that you see a lot more than that. You would have to be, number one to see just the 90 square feet, you would have to be at eye level straight across, and that is not what you see. You are standing on the ground or driving up Rock Road from the south or driving down Rock Road from the north you see not only that face or that side of the sign, you also see the back part of the ring and another side of the ring as

you pass by it. So you see really a whole bunch of that ring as you are looking at it. You are seeing a south face. You are seeing a north face, if you are coming from that direction. You are seeing the front face where they have Brandon Steven Motors. It is my feeling that really that whole ring should be part of this sign display, and the square footage of that ring has to be calculated. It is more than the 10 percent embellishment allowed to a sign.

So that, in the nut shell, is kind of what my Interpretation says, there is another Section in that same (m) of 220 in the Sign Code that also says that if you have faces on a sign that are separated by more than 3 feet you have to count both faces towards your total square footage. So to me the north face, the south face, they are 30 feet apart you would have to count both faces which would be about 90 square feet, and then, of course, on the front they have signage, and they are saying if you are looking right across on the other side of Rock Road you would see about 90 feet, but I say you will be seeing more than that because you see the front plus you see the back part of the ring. I am not sure of the exact square footage, but I think that anyway that you calculate it, you are way over the 104 square foot that would be allowed maximum on this. I would be glad to try and answer any questions for you.

RUANE: Any questions from the Board?

SKELTON: I think I might have misunderstood something. Did you say how much was one area of the outside perimeter or the inside? What was the square foot on each area?

SCHROEDER: If we just count this sign that they are proposing is about 3 foot tall, the chrome outside edge 30 foot in diameter. If you take the area of the outside face of that ring it is about 283 square feet.

SKELTON: So it is 283 square feet and then you have the inside of that?

SCHROEDER: You could. That is another possibility.

SKELTON: The inside could also be considered square footage for a sign in addition to?

SCHROEDER: I think you could. No matter what angle that you are looking at this you are going to see not only the outside face of what you are looking at from whatever direction you are coming, you are also going to see the back side of a face that is parallel or on the other side of that ring. You really are going to be looking at quite a bit more of this display then just that 90 square foot.

TIDEMANN: When you determine square footage of the ground sign, are you

determining the square footage of the pole itself on a pole sign to determine that as well?

SCHROEDER: No not generally. Sometimes we do. It depends on the design. I think you have seen a lot of banks that have been getting pretty fancy with the monument that they mount their actual sign on. Maybe they are chrome. Maybe they have the colors. We do count that because it is that architectural embellishment and part of the sign display. But typically the pole, no we do not.

RUANE: That leads into the next question. Can you help me with the understanding of what truly is an architectural embellishment for the purposes of the Sign Code?

SCHROEDER: That is not really defined in the Sign Code, but normally that has been determined to be a feature that kind of ties the sign or the theme of the business in with the sign. A lot of times it is the color, the business, the building might be a lot of chrome so it would be the chrome that is included there. It might be some artistic feature that might be neon things on the edges that do not have wording on them but are actually are an integral part of the sign, and they are kind of are designed outside of what you would see as a concrete base or a pole.

RUANE: If this signage for the business were mounted on like a canopy like you see over gas pumps or something like that would that canopy be considered an architectural embellishment? Or would you just look at the sign aspects?

TAPE CHANGE

SCHROEDER: You can have the maximum 20 percent of a wall sign on that little piece that is showing of the canopy so they are looked at totally different.

RUANE: Any other questions for Kurt? We may have some as this goes on so please stick around. Now let's here from the applicant please.

ROBERT W. KAPLAN, ATTORNEY AT LAW, 430 N MARKET, WICHITA, KS REPRESENTING BRANDON STEVEN MOTORS: Let me tell you on the outset that there can be no meaningful interpretation of this request without a thorough understanding of the controlling ordinances. In determining the matter, you are immediately met with a number of problems. Let me, if you will, let me outline the issues, and then I will give you the issues that are before you, and then I will explain how I see the ordinance and the application of those issues.

First of all, as Kurt candidly told you, this is a very unique situation. The City of

Wichita ordinance does not contemplate this type of sign. It was not contemplated when the sign ordinance was written, and the sign ordinance therefore does deal with a sign which has a structural member, and that is what this is. It is a structural member, instead of a pole you have a ring. It has a structural member which is circular, and we don't have a sign ordinance that deals with it.

Secondly, the ordinance is so vague in its application that it is incapable of uniform enforcement. We are going to get to that in just a minute.

Thirdly, the Interpretation from Mr. Schroeder in this case relies on sections of the ordinance which are not even applicable to this case. I have given you two ordinances. One of them was already in your packet, and I called Scott's attention to a typographical error, and I have given you another one, he may or not have corrected it. But the (m) provision of 24.20 as contained in your staff report is incorrect, and it is not close to the actual wordage of the ordinance. That may have been corrected, and that is why I called Scott.

Finally, your point of embarkation in this case has to be the purpose of the sign ordinance in the first instance. In other words, when you sit as a BZA on a sign ordinance what is your mission statement? Why do you sit here in interpretation of sign ordinances? The ordinance does speak to that, and I gave you 24.04.020, the purpose.

Now that is not in your staff report, but please take just a moment if you will and review the purpose section of 24.04.020. To eliminate potential hazards to motorists and pedestrians; to encourage signs which, by their location and design, are harmonious to the buildings and sites which they occupy and which eliminate excessive and confusing sign displays; to provide an opportunity to achieve a reasonable balance between the need of the sign and outdoor advertising industries while improving and preserving the visual qualities of the community; to protect public and private investment in buildings and open spaces; to provide for the administration of the regulations imposed and set forth herein; and to promote the public health, safety and general welfare. That is your mission statement in this case. That is the reason that you sit here and make a determination, not on a variance case, but on a sign interpretation. Now that is a generic statement, but I ask you to keep it in your mind as we work through this.

How to measure that is the issue. Mr. Schroeder told you that since the diameter of the sign exceeds three feet that it becomes a double faced sign, and you have to consider both sides. Contrary, that is not true, and that is not what the ordinance says. You read it for yourself. The purpose of the ordinance, if you read subsection (m), the fact that the sign has a diameter in excess of three feet does not make it a double faced sign. What the ordinance says is that the intent of the

ordinance is to treat a double faced sign where the faces are less than three feet apart as a single face. That is what the ordinance says, it says when you have a double faced sign, but those faces are less than three feet apart, in other words when this diameter, if these were a two faced sign, which it is not, you have a face here and a face here and a diameter of less than three feet, that becomes under the ordinance a single faced sign. That is what the ordinance says, and I think that Ms. Dickgraft will agree with me. It is not to treat it as a double faced. It tells you when to treat it as a single face. That wording and that section of (m) is not applicable.

So you move to the second paragraph of sub-section (m), and that is the heart of this discussion today. I have given you that. You have it in your staff report. It is on page 868 of the Code Book. It is the second page of my handout entitled (m) Gross Surface Area of an On-Site Sign. You move to that in determining the surface of a sign. It says, I know that you can read but this is the focus of this thing, each face of a sign may be broken down into two areas. Not in this case. This is a single faced sign, and it has a facing only on Rock Road. That is the only signage is on the Rock Road frontage. It says each surface area in this case, you have to understand that should read the surface area because we are only talking about one surface, shall include the total area within a single continuous perimeter enclosing the extreme limits of the sign elements. What does that say? What that says is that the area of your sign is from here, logo, through here, to that logo. That is what that ordinance says, and that is clear, the extreme limits of the sign elements. What are the sign elements of this case? They are the logo and the verbiage. This is your sign. That is less, substantially, than 104 feet, if you don't count the structural member the support member, which is the ring.

When you get into the discussion that Kurt said, that he was going to count the supporting member as part of the sign, (m) goes on to say that you can do that when you have architectural embellishments that met the conditions, contains printed copy, architectural embellishments which do not contain any advertising or printed copy, are not lighted and do not exceed ten percent of the permitted sign area. We are not lighted. The structural member does exceed ten percent of the sign that is true.

Now define for me somebody here, in a legally sufficient stringent way, you give me a definition of architectural embellishment, because I am clueless. Why is a round structure an architectural embellishment? A square structure isn't. A rectangular structure isn't. I have been up here on other signs, All Star Sports arena that I did for Ron Cornejo east and west where we got stars with points, is that an architectural embellishment? When is an architectural embellishment? What is an architectural embellishment? What it is, it is whatever the Superintendent of Central Inspection says it is.

You can't enforce and define and have uniform application of a law, and no criticism at all to Mr. Schroeder, I love him, he does a wonderful job. But he sees this as an architectural embellishment. Would another Superintendent see it as an architectural embellishment? I don't know, and neither do you. When you got a Code constitutionally, and I don't want to do a legal seminar here and Bickley knows this, constitutionally you have to have an ordinance which is capable of easy understanding and objective not subjective but objective application.

We don't have that here. We have got any number of signs around town, I don't know whether they are grand fathered, or they are not grand fathered. I can go all over town, and I don't want to get anybody in trouble, but he mentioned the Emprise Bank sign. Emprise was one that I would have mentioned. There are new Emprise signs. Look at the size of that sign. Keep in mind that a sign can't exceed 80 percent of the linear front footage. I guarantee you that sign exceeds 80 percent of the front footage they got on that building, and that is true all over town. So you don't count that. What you do you count is the surface area. You don't count the pylon. You don't count the pole. You don't count the supporting members. If you did, most all of our signs would be out of sync with the code. You count just the surface area, unless you find that it is an architectural embellishment. I hate those words because I don't know what they mean, and I would just about challenge anyone here, in a respectful way, to define for me in a legally sufficient way that a court could follow and apply and understand what constitutes an architectural embellishment.

When you wrap a pole and make it a pylon and you put pretty blue metal on it or you paint it or you put pictures on it or you list like the banks do ATM and list all of their services is that an architectural embellishment or is that a supporting member? Why is this not a supporting member with this as the sign face? Why because it is round does it also take on a life of its own as an architectural embellishment? I don't believe that it does, and I don't believe that a court would find that it does, any more than a wrapped pole or any other pylon sign. The term is just a totally abstract term and has no place in the Sign Code. That is not your problem today, but your problem is today, you sit here, as Mr. Babich said and very accurately said, in a judicial capacity. This is not a case of allotted public hearing that we want it, we don't want it, we want it, we don't want, we think it attractive, we don't think it is attractive, none of that really makes any difference. You are interpreting an ordinance, and that is your mission in this case to interpret the ordinance in accordance with that purpose section.

We think quite frankly that it is very aesthetic, and we think that it fits the area and that it is far more befitting to that North Rock Road area than a pole with a square piece of metal on top and some letters painted on it. That is our opinion. I think that Brandon wants to say a word so I told him that I would save him a minute. But if our face was square, if it was rectangular, we would be okay. We

have got about 80 or 90 square feet of sign is what we actually have. I suggest to you that you really need to find that this is within the parameters of the sign ordinance by looking at the sign surface and not including the supporting member, because you don't include them on any other sign. But this one, all of the sudden, Mr. Schroeder has determined that it has to be included. Mr. Joe Poston from Miracle Signs is here as well. Brandon did you want to have a word?

BRANDON STEVEN, %STEVEN ENTERPRISES, PROPERTY OWNER:

I have done several signs, and I am always trying to go bigger, bigger, bigger. I am also trying to max out the Sign Code, trying to find out how big I can go. But this sign, my architect and my designer, sold me on the fact that less is more. I look at this sign, and I see a total height of 3 feet. My largest letter is only 2 feet high. They sold me, with my competition of signs on Rock Road, that I can't compete with the biggest sign, so I am going smaller. This, in my mind, is less is more, and that's what sold me on this sign.

Contrary to the case ahead of me here, that was obviously a lot of conflict here. They were going for a larger sign. In my mind, this is not a larger sign. This is the smallest sign that any business that I have in Wichita. My lettering is very small. You can see that it is not even 2 feet high. It will be the smallest sign that I have. I agree that it is not an architectural embellishment. My sign is the smallest face on Rock Road, and I can't compete with my neighbors with the largest sign, because I do not have the frontage on Rock Road, so I had to do something creative, which is smaller.

RUANE: Thank you, you are out of time. Are there any questions from the bench? I have one to throw out and whomever from the applicant's side wants to answer it can. If this is aesthetically pleasing and adds to the sign itself, how is that not an architectural embellishment? What type of embellishment is it then?

KAPLAN: You have got to start Mr. Chairman with how you define an architectural embellishment. I can't get beyond that point. But many, many signs in the community, such as the picture that I showed you of the Emprise signs, many pylons signs are aesthetically pleasing. The reason that you wrap poles is because steel poles are not very attractive. So you wrap metal around the steel poles, or you paint them, or you stucco them, or you in some way you dress them up, or make them pretty, and under that circumstance, then I guess that you can say that everyone of those treatments on every sign in town is an architectural embellishment, and the standard for the sign ought to be included in determining the square footage that is allowed, and we don't do it. Sure it is pleasing. It is aesthetically pleasing, and I think that is a plus. I think that is in accordance with your mission statement, and with the purpose with enforcing the Sign Ordinance, I like that portion of it. But that doesn't necessarily make it an architectural embellishment. Where, if it does, then I would think that you would have to say

that my client, All Star Sports sign, is an architectural embellishment, because it is a star and has points. I think that you would have to say that those Emprise Bank signs I showed you, which are huge, are architectural embellishments, that you can't count just the surface area because they are pylon wrapped and they are made very attractive, and I see that as a positive not a negative.

SKELTON: Mr. Schroeder, could you speak to the point made by Mr. Kaplan about a double faced sign that is less than 3 foot? The ordinance is out of sync, 3 foot apart, and would be treated as a single faced sign. Could you speak to that point please?

SCHROEDER: I will try to answer that, but I also wanted to talk a little bit about something that I did omit when I was up here making my presentation. It was in my interpretation letter, and I think it is important, and I think he skipped over it when he was reading from the Code.

That is what we talked about the continuous perimeter and all those things. It also says that such perimeters need not include any structural elements lying outside the limits of such sign, which are the poles outside. We are not counting those. You know the ones that are support the whole ring, when they don't form an integral part of the display. That is key, and I did not focus on that.

That was also in my interpretation, that the ring itself is the display, the sign. The structure elements are basically the post that are strung down with the cables and hold up that display, or that sign. So not only does it then exceed any allowance for architectural embellishments, which I think that this is, it says that you could have up to 10 percent if that is the interpretation that is made. But it is also the whole thing is a display. This ring is the sign, and it is part of the display, so that was an important element.

When I brought up the separation, I do think that it says that is how you calculate the surface area of the sign. So if you don't have one side then you have two sides. So you have to count the surface area of each side, if they are more than 3 foot apart, toward the allowed square footage for that total front.

SKELTON: So because the inside of the ring is greater than 3 foot from the other side of the ring you are counting that also?

SCHROEDER: Well there many ways to look at this. But I am also saying the ring is also an integral part of the display. That ring is basically the sign. The supporting elements that are taken out of this are the post that are outside of that ring, by quite a distance, that are supporting it by cables. But if you had a typical pillar, square pillar, that happened to be six foot wide or six foot square, and it is over 3 foot apart and it had 50 feet on this side and 50 feet on that side, that is two

faces. You would add them together and say you have a 100 square foot of sign. If on a typical sign you have a span that is only 8 inches or 10 inches wide, then the sign is 50 square feet. That is what you can figure. We have done it that way for many, many years.

RUANE: What other questions?

SCHROEDER: I also want to say that he did mention that a lot of these signs may be nonconforming. That is probably true. The sign regulations really got much more restrictive only in 1990. So there are plenty of signs out there, and you are allowed if you don't change the structural part of the sign, to change the face that existed previously. It is hard to know how many, but there are about 20,000 or more signs out there.

RUANE: Anyone in the audience that would like to be heard on this matter?

ROGER RAMSEYER, 4111 E. 37th St. North: I am representing, and was asked to attend this afternoon after finding out about this just hours ago, was asked to attend by Mr. and Mrs. Charles Koch, who's residence is directly across the street. I also, aside from representing them personally this afternoon also manage the Koch Foundation, which owns property on the southwest corner of 13th and Rock Road, which is undeveloped property at this point.

Please accept our apologies for our informality and my lack of preparedness and brevity this afternoon, but having found out about this only hours ago, we wanted to quickly voice some very serious considerations this afternoon. Mr. and Mrs. Koch apologize, they have no recollection of being notified of this hearing, and maybe that is not required in an appeal type of variance.

This request for an appeal to the Zoning Administrator interpretation is obviously very unique or extremely unique. Upon seeing this for the first time just walking in here and seeing the one in Houston and being familiar with the Galleria, it gets a lot of attention. The applicant had talked a little bit about being harmonious with the neighborhood, and the immediate response from us, obviously, is that if we are looking for harmony with the personal residence of the Koch's, or the residences within the condominiums immediately to the south, or the undeveloped property, harmony is not necessarily an element here in this unique situation.

In the brief review that we have had time for here, the sign appears to clearly exceed the maximum square footage by my quick math of somewhere between 2 ½ and 5 times that which is allowed. Accordingly, we would respectfully ask that any vote on a different interpretation simply be delayed at least one month to give us the privilege of a least studying this situation and figuring how it does fit in with their personal residence located directly across the street. To look at the

impact of the neighborhood, the legal issues, surely we would assume that there would be some lighting that will occur at night, or at least on winters, or on evenings when the dealership is open, and other issue that might impact your vote on a more liberal interpretation of the Zoning Administrator interpretation.

Furthermore, it is our understanding with the maximum allowable for this particular property being is 104 square feet. We would also at least like to have an understanding and, therefore, request the delay of the fact that we will assume that the applicant would have no other signs beyond this, and also to understand the implications of the poles, and if there is lighting at night, will the poles be a part of that. If the Board does not wish to grant a 30 day delay to allow us the opportunity to study this further, and perhaps meet with the applicant and understand the aesthetic implications as well as the Code, then Mr. and Mrs. Koch have asked that you give respectful consideration to affirming the Zoning Administrator's interpretation that this sign in fact measures somewhere between 283 and 707 square feet in size, which, again, is somewhere between 2 ½ and 5 times the allowable amount. So we thank you, and again apologize for our informality, and ask that you give strong consideration to giving the delay to allow us the privilege to meet with the applicant, and understand the implications, and exam the code, and if you do feel compelled to need to vote today, we would urge your reaffirmation of the Zoning Administrators interpretation.

RUANE: Any questions for Mr. Ramseyer? Anyone else who would like to be heard? As to a point Kurt raised, or not considered, or a point not addressed in your 15 minutes.

KAPLAN: That, and a new point raised by the additional speaker, yes, I request two-minutes of rebuttal? I have never, ever, that I can recall, not agreed to delaying proceedings to talk to affected neighbors and to try to work things out. However, this is not a public hearing type of matter. This is not a zoning case. This is not a variance case. This is an interpretation of black letter law. Now we are either right or we are wrong, and delaying it and having public input may be interesting to you, but it will not assist you in interpretation of the ordinance, which is what your task is today to read and interpret the ordinance.

As far as the ordinance is concerned on that sub-section (m), Kurt is just wrong. That is not what that ordinance says. It says "the gross surface area of a sign shall be the sum of all surface areas of all the sign faces except that ground or pole signs designated as double faced signs with both sides parallel and when the distance between the faces does not exceed 3 feet then only one face of the sign shall be considered in determining the sign area." What that ordinance does is to define when a double faced is a single faced. It is not applicable to this request. It is just not. So then you come down to having to decide what is an architectural embellishment, and I am going to conclude is that is just not something that you

can put a legal definition on. It can't be enforced.

BRENT STEWART, 4111 E 37TH ST. NORTH: I am also with Roger Ramseyer and represent the Koch family. Beyond the couple of questions that I might have for Mr. Kaplan, he made the point of the architectural embellishment, and I think that it is obvious, in my point of view, that the diameter is part of the sign. It is made that way to make it bigger. Smaller is more. The more part comes into the embellishment of the architecture of the sign.

If they don't agree. Let's go back to the monument type sign and stick with the square footage there. Obviously they want that diameter because they want the architectural feel of that sign, and it makes up the size of the sign, in my opinion.

Also, he said that is a subjective call, but aesthetically pleasing to the neighborhood, which he brought up as our objective, is why we have the sign ordinance. Aesthetically pleasing, I am not sure that could be legally defined. I am not an attorney, but the Koch's do object to the impact that it has to this particular area, and they do not think that it belongs there, or that it fits with that area. It is a unique situation, but as far as their vote is concerned, it is not aesthetically pleasing, and that is probably more than any reason why we are here today.

One question that I did have was the pole height. According to these drawings, I couldn't tell how high the poles are that are supporting the structure.

AUDIENCE: 25 feet.

DISCUSSION AWAY FROM THE PODIUM.

RUANE: I am being a little too loose as the Chair. Why don't you conclude your remarks at the podium so that we can get them down on the record, and then Brandon it will be your turn to step-up. Bob I hope I haven't opened another can of worms where you are going to have to do another rebuttal. If I have, I kick myself now. Are you finished with your remarks?

STEWART: Yes, I have.

RUANE: Brandon, you have a question?

STEVEN: This is getting the opposite attention that I wanted. The reason that I am doing this sign, this sign cost six times the cost of any sign that I have ever done, I am doing it to please the Koch's, to please the resident, to please the neighbors, in that area. This sign could not have cost any more money, and I couldn't have spent any more money designing the sign, and I spent more in the

architectural plans of the sign then I have on any other sign that I have built.

He said the Koch's wouldn't approve it, but I think they would love it if they would see the picture of the sign. You said you have seen the sign and the structure in Houston. This is less of a deterrent. This would be less of a structure than a 10 by 10 sign that I could put up there. I could put a 10 by 10 sign up there, and that would be less obnoxious than this sign. I don't think they have seen the picture enough to say the vote "No" for it.

RUANE: Brandon, did you have a question?

STEVEN: He said they objected to the aesthetics of the sign, and I wanted to make sure they had seen the sign. They have only seen this an hour ago.

RAMSEYER: I may have misspoken there. I was directed to appear to speak on behalf of the Koch's to voice an opinion. It has been described to them based on what we learned two hours ago, but given only a description that is why they request a delay to get an understanding of that.

RUANE: Just to make the record clear. The Koch representatives reemphasized in response to Mr. Steven's question that they have only been aware of this say only an hour and half or two and haven't had the opportunity to have full review and, in part, that supports your request for a continuance of this matter for thirty days or so.

KAPLAN: Whatever it is worth, I realize that it just happened today, because I didn't know they were going to be here. I offered to meet with these gentlemen before the meeting, answer their questions, and discuss this with them, and that offer was declined.

RUANE: That is also noted for the record. Before I open any other cans of worms, I better limit our comments up to here. This is a difficult matter. I think that Sharon did a great job of putting together a memo to help focus our discussion and thoughts here, which identify both the jurisdiction grounds and points out they we are essentially the court of last resort here. Is that not the case?

DICKGRAFE: No, this decision could be appealed to the District Court by either party.

RUANE: The standard of proof which is that the appellant has the burden of persuasion in showing that the interpretation was in error. So there is much to discuss just on that. As well, we have heard from an adjoining property owner that they would like for us to table this matter for 30 days, and I suppose that is an option to be considered as well.

PITTS: I think we could consider that, couldn't we Sharon, if we desire to?

DICKGRAFE: I would think that the Board could do that. I would, however, note that on an appeal you are not really looking at the five factors for a variance, which would include adverse affects to property owners. What the scope of your determination is limited to is whether or not Kurt's interpretation of the Code was reasonable, and that is really it. If the Board wants to review additional facts, or if the Board wants to soak in what has been said today, I think that is within your authority. However your decision, ultimately, is only whether or not Kurt's decision was reasonable given the facts.

RUANE: Kurt, would you be available a month from now?

SCHROEDER: I would be.

FOSTER: May I ask the staff, I assume that no notice is given on an appeal?

KNEBEL: That is correct. The only notice that is given on an appeal is notice to the appellant and notice to the property owner on which the appeal is filed, if the appellant is not the property owner.

FOSTER: So we can understand why the people in the audience are concerned that they haven't had enough notice to do this. I am very much against the idea that we don't give notice in the general area, but that is just a general opinion.

RUANE: Is that a motion to table this or a comment in favor of tabling this?

FOSTER: Yes, I think this is a very complicated subject, and I think that it revolves around the question of the set of standards and regulations and a very unique sign and the two are not meshing together. Does that mean that the sign is so unique that it doesn't meet the Code or does it mean that the regulations need to be re-written to consider these things? So it is a very awkward situation, as I see it. I would see why the people in the audience may want to make a more informed decision and come back next month.

FOSTER moves PITTS seconds to defer BZA2001-00063 to our next meeting in order to give the concerned people some time to study the matter.

RUANE: I would say, as discussion, that this is a very confusing matter, and it looks to me as if, aesthetically, it would be a really cool sign and not contribute to the sign congestion and overall density as it appears commercialization along Rock Road. But it is quite difficult to try to apply our sign code to this particular

sign. So I would appreciate the additional time to think about it. Any other discussion on that?

FOSTER: We might mention the date would be what?

KNEBEL: It would be January 22, 2002.

FOSTER moves PITTS seconds to defer BZA2001-00063 to January 22, 2002 at 1:30 p.m. in order to give the concerned people some time to study the matter.

MOTION carries 7-0.

RUANE: Would the Board like to discuss this Item some more now in front of the parties so they can get a little idea of where we are coming from?

SKELTON: I do have one more point, Mr. Chairman. The point is regarding architectural embellishments. Who here is the law on that terminology? Who is the deciding factor? Is that Mr. Schroeder? If it is used in the Code, somebody has to have a definition for it?

KAPLAN: There are a number of U.S. Supreme Court cases on signs, and you wouldn't believe this, but it does impact constitutional law and the due process clause of the 14th amendment. One of the trigger points of the 14th amendment on due process is writing an ordinance which is easily understandable by those persons who it regulates and is capable of objective enforcement.

I say that this ordinance, and the term architectural embellishment, walks all over that due process provision. Because it is not easily understandable, as evidence by this hearing today, and it is not capable of uniform enforcement, because it depends upon who is making the interpretation.

SKELTON: So the answer would be the Zoning Administrator?

KAPLAN: The Zoning Administrator, Kurt, knows this. Sharon knows this, better than I do. This is what they do, has the authority to interpret the code under the code, yes sir.

SKELTON: And therefore apply a definition to architectural embellishment?

KAPLAN: I don't know that Kurt has implied an interpretation. He has called it an architectural embellishment. I don't think that he has interpreted or defined it. He has just simply said that it is, in this instance, but in another case, he may say it is not, and that is my problem.

SKELTON: So it might be this Board's responsibility for this case, or is that wrong, or would that be wrong, or is that part of the Board's responsibility?

KAPLAN: I think that you can arrive, if you wish, in my opinion. Sharon, I think you can arrive at your own interpretation in deciding whether Mr. Schroeder's interpretation is correct.

SKELTON: One could say that chrome plating is an architectural embellishment, correct?

KAPLAN: Well it is steel.

SKELTON: Whatever, or paint could be?

KAPLAN: Anything could be that you want to call an architectural embellishment, and that was my point with the pylon signs and other signs around town that are addressed in such a way as to make them more attractive to passing motorist. You can call anything an architectural embellishment, or suggest that anything is not. It doesn't have any legal substance, and I say you can't appeal it.

SKELTON: There are other factors, or other things that are subject to this type of quandary. When it comes to applying the term architectural embellishment, Mr. Schroeder has apprised himself in this situation more than once or twice. It could happen again; three times, and he might, as Zoning Administrator, have differing opinions on case by case.

KAPLAN: That is right and that is why you need, and Mr. Foster said it and I don't often agree with Bickley but he is right, you need an ordinance that is more site specific that gives Mr. Schroeder some specific criteria that you can do, so we don't get into this kind of case. But an ordinance that is too vague to be understandable will fail in a legal test, because it is not enforceable. We see it all the time. We see it in pornography area.

SKELTON: Exactly.

KAPLAN: A lot of that where the court says when it is art and when is it pornography. In an art class at WSU it is art. On south Broadway, it is pornography, and the court said wait a minute what is the distinction?

RUANE: So Kurt, should say I know an architectural embellishment when I see one?

FOSTER: Are we accomplishing anything here or just holding the audience

longer?

SKELTON: I find this time very valuable Mr. Chairman. I think the questions I had a minute ago are very relevant.

FOSTER: We are going to have to hear it all again.

RUANE: Kelly, is this new information?

KELLY RUNDELL, SENIOR ASST. CITY ATTORNEY: I think it deals with what you have just been talking about. I don't think it is fair of Mr. Kaplan to answer Mr. Skelton's question without the City to having a chance to speak on that also.

RUANE: I would agree. Please try to limit your comments to about five minutes and help them direct us towards making the decision.

RUNDELL: It would even be less than five minutes. I think the whole talk about architectural embellishments is probably unnecessary. Kurt Schroeder's original interpretation is the measurement of the sign itself. The whole ring, because if you look at 24.04.220 (m) it talks about measuring it, whatever is the integral part of the display, and then it goes on to talk about architectural embellishments. If you deal with this ring as an architectural embellishment it violates the Sign Code because it is bigger than 10 percent.

Then you have Mr. Kaplan telling you that is all unconstitutional and all that stuff. You don't have to get to that. The sign itself, the integral part of the sign and the integral part of the display the round part, violates the Sign Code itself. You don't even have to worry about the architectural embellishments. That is, if you don't find that the ring is an integral part of the display, and that is what Mr. Schroeder was using in his original assessment of this situation, the whole measurement of the ring. To talk about the measurement of the sign being only from this letter to this letter is not very realistic. They don't use that measurement on any sign. You use the edges of the sign. Because they use a ring format, there isn't really any far corners, so you have to measure the whole ring. It is all part of the integral design, and you don't have to worry about the architectural embellishment language in this particular situation.

RUANE: Thank you for your comments.

KAPLAN: In determining the surface of a sign, each face of a sign may be broken down into two areas. Look at the second paragraph of section (m). Such parameters need not include any structural elements unless they meet those conditions which is preceded by the architectural embellishment.

RUANE: Now you are going to way in Joe?

MIRACLE SIGNS, JOE POSTON, 3611 N. BROADWAY: If this did not have the copy on it, it would not be a sign. It only becomes a sign, which is a form of communication, when the copy gets put on it. Otherwise it is just an architectural piece. So whenever we put the lettering on there, that is when it becomes a sign. I do beg to defer that it is the lettering that makes the sign not the ring.

DICKGRAFE: I would like to make one comment to kind of answer Mr. Skelton's question, because I am not sure that it was answered. Who determines whether or not the ordinance is sufficient is not this Board. Mr. Kaplan's arguments that it may or may not violate the due process, he is right ordinances have to put people on notice, those are judicial decisions, and it would be my opinion that this Board's function at this point is limited to whether or not, given that language be whatever that is, whether or not Kurt's opinion was reasonable.

TAPE CHANGE

RUANE: We will study this over the next month and re-open this up for comment again. Remember that our examination and the applicant's burden of proof is showing that Mr. Schroeder's interpretation was unreasonable upon the appellant giving the City Code, Sign Code, etc. So those are the things that we need to look into. We have one more variance request before us, Item #4 BZA2001-00064, variance to reduce the rear yard setback by 10 feet 10 inches at Horace Mann Elementary on property zoned "B" northwest corner of Market and 11th Street North. Does staff have comments.

PHILLIPS: Is this the first time for this application?

KNEBEL: Yes, it is.

PHILLIPS: Nice change.

LAUGHTER

KNEBEL: Horace Mann School is located on the northwest corner of 11th and Market. It has been in this location for eighty plus years and has expanded over the years to include both permanent and portable structures. As everybody I am sure is aware, the School District has recently received, through a vote of the public, monies to construct and remodel school buildings.

In this instance Horace Mann School is planned to be reconstructed, and you can

see from the aerial here, the original school is on the east part of the lot and the addition is on the west. The portable classrooms that have now been removed are on the south, and the plan is to reconstruct a new school, an entirely new school, south of the existing building, and then, when that is completed, to raze the existing building and basically swap what is now playground for a building and visa-versa.

The design, as you can see here, is a common design between two schools that are planned to be replaced, Horace Mann and Washington Elementary. The common design was selected in order to save money on architectural cost and in an attempt to hire a similar contractor to again save money in construction cost. This particular site has a limitation, that apparently the Washington site does not have, in that at the very end of the site, the School District owns the entire block with the exception of these two properties, a house on this lot, a church on this lot. As you can see in this area that I have circled that is on the staff report, they have a minor encroachment into the rear setback approximately 100 square feet of this entire building would encroach into that rear 15 foot setback by 10 feet 10 inches, so they are seeking a variance to reduce the setback in that area.

Planning staff finds that this particular property is unique in that it is an existing school site with an existing school building on it that has very little ground for a school to be reconstructed on the site. The only real way that this particular building that is proposed can be constructed on this site is to encroach into that setback. We have looked at it as far as moving the building further to the north to eliminate that encroachment, and there is just not room on the site to do that.

The adjacent property owner that is most impacted would be the owner of this house right here, which is located approximately 65 feet west of the property line. As you can see, the encroachment in the rear setback is entirely north of this property owner's structure, so we feel like that encroachment would not have any adverse impact on that adjacent property.

The hardship on the applicant, we feel requiring a redesign of this entire building or this portion of this building in order to eliminate that setback would create an undo hardship on the owner. That particular location, you have a copy of the floor plans and you can see on the floor plan where the encroachment is, is this location right here which is an entrance hallway. Were that to be redesigned, it would involve the relocation of a hallway, the restructuring of bathrooms and classrooms and so forth in order to redesign and change the design of the structure to eliminate that encroachment, and we feel that is a hardship on the applicant.

As far as the public interest we feel like that there is public interest involved in this and the project is funded with public tax money and that education is of primary interest to the public.

The spirit and intent as far as the intent of providing setbacks between buildings and from buildings to property lines is to provide for sufficient space for light air and circulation, for fire protection, and we feel like those intents of the setback requirements are met in this instance.

We find, based on what I have just said, that the five conditions for granting of the variance exist and recommend approval of the setback reduction just in the location that is circled on the site plan there, which would be the reduction to 4'2", and that we would require the site to be developed in accordance with the site plans as submitted, and that the permits be granted and that the project be completed within one year. With that I will answer any questions the Board might have.

FOSTER: Scott, is there anything between the proposed building and the house to the west?

KNEBEL: Any structures you mean?

FOSTER: Well, any vegetation, fences or anything?

KNEBEL: I don't recall off the top of my head. It looks like a tree there, a rather mature tree. This structure is going to be removed. It is owned by the School District. It is this house right here, and then you have this mature tree right here.

FOSTER: You have no comments from them?

KNEBEL: From this property owner? No we have not. I was contacted by one property owner who lives northwest of the school site, and quite frankly, he was not concerned with this variance. He was upset that the School District vacated 12th Street twenty or thirty years ago.

PHILLIPS: Scott, just a comment the architect and or staff has tied the building overlapping 10 feet 10 inches going east west, I would suggest that you do the same thing north, south to further define that area.

KNEBEL: As far as the encroachment, I understand what you mean as far as basically a technical encroachment into the side yard.

PHILLIPS: In other words it does tie that down a little more specifically, because if you go the 10' X 10'; I think it is a better definition on that to me.

KNEBEL: That is a point well taken, and I think we can modify that and add

that distance. I can scale that off and add that to an amendment to the motion.

RUANE: Any other questions for Scott?

PITTS: Scott, as close as you know from studying the plans and what is there already you couldn't foresee anyway possibility that tree causing any obstruction for the entrance for any emergency type vehicle if it was necessary once the building is in place?

KNEBEL: With the exception of this one area the building does meet the setback requirements to allow sufficient circulation around the building with the exception of that one corner. It is our opinion that one particular corner by itself is not going to cause that problem. Were that entire face of the building to be 10 feet into the setback, I think we would have a different opinion of this matter. But just with that one little 100 square foot portion, we feel like it is a very minor encroachment, it shouldn't have the impact that you indicated that it might.

RUANE: Anyone else to be heard on this matter? Discussion and or motion.

PHILLIPS: Just a brief comment for what it is worth. I think that Scott's assessment is exactly right. I have looked at the plan. It does, if anything they were trying to eliminate this encroachment, it does impact the plan considerably. What they have done has been a very nice job, and have taken a unique situation and applying all the applicable codes, the ADA, as well as the standards, in being able to provide a proper facility for an assembly like this, for an occupancy like this. My hats off to staff for working with the architect and the school on this.

PHILLIPS moves PITTS seconds that the Board accept the findings of fact as set forth in the Secretary's Report; and that all five conditions set out in section 2.12.590 (b) of the City Code as necessary for the granting of a variance have been found to exist and the variance be granted subject to the conditions set out in the Secretary's Report including the recommendation 1 through 4. Also noting that we would like to further define the north, south dimension of the encroachment.

MOTION carries 7-0.

RUANE: J. R. Cox left early so therefore there must not be a report from him.

KNEBEL: He did indicate that he did have some items to report, but he did have an engagement that he could not miss.

RUANE: We will hear those next month; otherwise, we will stand at

adjournment.

MEETING ADJORNED AT 4:50 P.M.